F. No. 198/23/2014-RA

SPEED POST

F. No. 198/23/2014-RA
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(DEPARTMENT OF REVENUE)

14, HUDCO VISHALA BLDG., B WING
6th FLOOR, BHIKAJI CAMA PLACE,
NEW DELHI-110 066

Date of Issue 19/10/22

Order No. 59/2022-CX dated 19-10-2022 of the Government of India, passed by Sh. Sandeep Prakash, Additional Secretary to the Government of India, under Section 35 EE of the Central Excise Act, 1944.

Subject : Revision Application filed under section 35 EE of the Central Excise Act, 1944 against the Order-in-Appeal No. 151/2008-C.-E. dated 29.03.2008, passed by the Commissioner of Central Excise (Appeal-II), Bengaluru.

Applicant : Pr. Commissioner of CGST & Central Excise, Bengaluru North.

Respondent : M/s Tronics Zone, Bengaluru.

ORDER

A Revision Application No. 198/23/2014-R.A. dated 20.03.2014 has been filed by the Commissioner of Central Excise, Bengaluru-III, presently, Commissioner of CGST & Central Excise, Bengaluru North Commissionerate (hereinafter referred to as the Applicant), against the Order-in-Appeal No. 151/2008-C.E. dated 29.03.2008, passed by the Commissioner of Central Excise (Appeals-II), Bengaluru. The Commissioner (Appeals) has, vide the impugned Order-in-Appeal, modified the Order-in-Original No. 104/2007R dated 20.09.2017, passed by the Deputy Commissioner of Central Excise, Kanakapura Division, in the case of M/s Tronics Zone, Bengaluru (hereinafter referred to as the Respondents).

2. Brief facts of the case are that the Respondents herein filed a rebate claim, on 07.08.2007, for Rs. 2,06,450/- being the duty paid on good exported, under Rule 18 of the Central Excise Rules, 2002. The original authority sanctioned the rebate claim, vide the aforesaid Order-in-Original dated 20.09.2007. The department filed an appeal against the same on the grounds that:

(i) the notification no. 93/2004-Cus is not applicable if the manufacturer exporter avails the benefit of rebate under Rule 18 of the Central Excise Rules 2002.

(ii) that there is an excess payment of duty by including the freight & insurance value, in the assessable value and such excess payment of duty on account of the same, cannot be sanctioned by way of cash but to be refunded as credit in CENVAT account; and

(iii) that it includes clearance of certain quantity of cable which are cleared as such, resulting in excess payment of duty and hence the sanction of rebate to be restricted to that extent.

The Commissioner (Appeals) did not accept the appeal of the department in respect of the grounds (i) & (ii) whereas in respect of grounds (iii) the Commissioner (Appeals) allowed the rebate by way of credit in the CENVAT account instead of that sanctioned in cash by the original authority. The department, thereafter, filed an appeal before the CESTAT which was rejected as non-maintainable, vide Final Order No. 20003/2014 dated 01.01.2014.

3. The Revision Application has been filed, mainly, on the grounds that the place of removal is factory or any other premises of production or manufacture of the excisable goods; that the inclusion of freight etc. upto the port of export is, therefore, not admissible and consequently, the corresponding duty paid cannot be allowed as rebate; the Commissioner (Appeals) has relied upon the corrigendum F. No. 605/50/2005-DBK dated 17.05.2005 to hold that Notification No. 93/2004-Cus dated 10.09.2004 has been amended to the effect that the benefits of that notification shall not be admissible only if rebate has been claimed on the material used in the manufacture of final products and the claim of rebate of duty paid on final product is not barred by virtue of the said notification read with the corrigendum; that a corrigendum by way of letter or circular cannot be

considered as the one affecting the earlier conditions; and that, therefore, the order of Commissioner (Appeals) may be set aside.

4. Personal hearing in the matter was fixed on 15.06.2018, 16.01.2020, 22.01.2020, 09.02.2021, 23.02.2021, 02.07.2021, 10.07.2021, 28.09.2022, and 19.10.2022. In the hearing held, in virtual mode, on 28.09.2022, Sh. Davindran K., AC appeared for the Applicant and submitted that due to passage of time the records were not readily available. Hence, he requested for the matter to be adjourned. Accordingly, the matter was adjourned to 19.10.2022. In the hearing held on 19.10.2020, no one appeared for either side nor any request for adjournment has been received. The Applicant department has, vide letter No. GEX COM/REV/MISC/56/2021-REV-COMMR-CGST-BENGALURU (N) dated 17.10.2022 submitted that the case may be decided based on records. Since sufficient opportunities have been granted and keeping in view the request made by the department, the matter is taken up for disposal based on records.

5. A condonation of delay application has been filed on the grounds that the department had filed an appeal against the Order-in-Appeal impugned herein before the CESTAT which has been rejected as not maintainable. Delay caused due to pursuing remedy in wrong forum is condoned.

6.1 The Government has carefully examined the matter. The two issues that arise for consideration in the instant revision application are:

(i) Whether by virtue of Notification No. 93/2004-Cus, as corrected by Corrigendum No. 605/50/2005-DBK dated 17.05.2005, the rebate of duty paid on final products can be denied?

(ii) Whether, in the present case, the place of removal is the factory gate or the port of export, and consequently, whether the FOB value shall include the costs incurred upto the port of export, for the purposes of Section 4 of Central Excise Act, 1944.

6.2 In respect of the first issue, the relevant condition of Notification No. 93/2004-Cus dated 10.09.2004 is reproduced as under:

> *"(v) that the export obligation as specified in the said licence (both in value and quantity terms) is discharged within the period specified in the said licence or within such extended period as may be granted by the Licensing Authority by exporting resultant products, manufactured in India which are specified in the said licence and in respect of which facility under rule 18 or sub-rule (2) of rule 19 of the Central Excise Rules, 2002 has not been availed:"*

Thereafter, vide Corrigendum F. No. 605/50/2005-DBK dated 17.05.2005, the words and figures "under Rule 18" were corrected to read as "*under rule 18 (rebate of duty paid on materials used in the manufacture of resultant product)*".

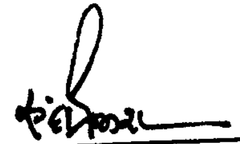
It is the contention of the Applicant department that a corrigendum by way of letter or circular cannot be considered as one affecting the earlier conditions. The Government is not persuaded to accept this contention of the Applicant department in as much as the subject matter is squarely covered by the decision of the Hon'ble Allahabad High Court, in the case of Polyplex Corp. Ltd. vs. Union of India {2014 (306) E.L.T. 377(All.)}, wherein

the Hon'ble High Court has examined the implications of the aforesaid corrigendum dated 17.05.2005 and has held that it will not only be applicable but it will be applicable retrospectively, since the corrigendum only corrects a mistake. Similar view was taken by the Hon'ble Karnataka High Court in the case of Jubilant Organosys Ltd. vs. Asst. Commr. Of C. Ex., Mysore-III {2011-TIOL-961-HC-KAR-CX}, in respect of the predecessor Notification No. 43/2004-Cus dated 19.04.2002, which was similarly corrected by way of corrigendum on the same lines.

6.3 In respect of the second issue also the matter is covered against the Applicant department, by virtue of Board's Circular No. 9999/6/2015-CX dated 28.02.2015, wherein it has been clarified that "6. *In the case of clearance of goods for export by manufacturer exporter, shipping bill is filed by the manufacturer exporter and goods are handed over to the shipping line. After Let Export Order is issued, it is the responsibility of the shipping line to ship the goods to the foreign buyer with the exporter having no control over the goods. In such a situation, transfer of property can be said to have been taken place at the port where the shipping bill is filed by the manufacturer exporter and place of removal would be this Port/ICD/CFS."* In the present case, the Commissioner (Appeals) has upon examination of documents found that the terms of delivery are mentioned as FOB in the relevant purchase order and invoice. Therefore, the costs incurred upto Port of Export being the place of removal are to be included in the assessable value. As such, there is no doubt that the Commissioner (Appeals) has correctly decided this issue as well.

6.4 As such, the impugned Order-in-Appeal does not merit revision.

7. In view of the above, the Revision Application is rejected.



(Sandeep Prakash)
Additional Secretary to the Government of India

The Principal Commissioner of CGST & Central Excise,
Bengaluru-North Commissionerate,
H.M.T. Bhavan, Ganga Nagar, Bellary Road,
Bengaluru-560032.

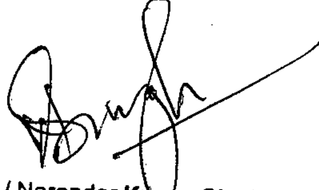
G.O.I. Order No. 59 /22-CX dated 19-10-2022

Copy to:

1. M/s Tronics Zone, #4, 1st Floor, 100ft Ring Road, Ittamadu, Banashankari III Stage, Bengaluru-560085.
2. The Commissioner of Central Excise (Appeals-II), Traffic & Transit Management Center, BMC Bus Stand, HAL Airport Road, Bengaluru-560071.
3. PA to AS(RA).
4. Guard file.

5. Spare Copy.

ATTESTED



र कुमार सिंह / Narender Kumar Singh
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